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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,527	06/14/2001	Jill Leslie Gizzio	21112.PUS	8140
44321	7590	02/23/2006	EXAMINER	
PATRICIA A. WENGER 201 NORTH JACKSON STREET MEDIA, PA 19063			SMITH, TRACI L	
		ART UNIT	PAPER NUMBER	
		3629		

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/881,527

**Applicant(s)**

GIZZIO, JILL LESLIE

**Examiner**

Traci L. Smith

**Art Unit**

3629

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
  - a)  The period for reply expires 3 months from the mailing date of the final rejection.
  - b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-13.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.
13.  Other: \_\_\_\_\_.

JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

### **DETAILED ACTION**

1. This action is in response to papers filed on January 30, 2006.
2. Claims 1-13 are pending.
3. Claims 1-13 are rejected.
4. The amendments submitted on January 30, 2006 have been improperly filed in that they fail to have the correct claim identifiers as well as fail to show in mark up form what changes were made to the amended claims.
5. The examiner is requesting copies of information identified in the disclosure. The applicant identifies the book "Encyclopedia of Dogs" by Caroline Coile as what is used to base the exercise requirement. However, examiner does not readily have this information available and is unable to make an assessment as to whether the exercise requirement is concrete and tangible subjected to the best guess of the dog owner. The examiner is unable to identify how the requirement is determined as well as establish if the exercise requirement the same across the industry.
6. The examiner is further requesting information on how the AKC classifies the "typical" weight of a breed as examiner does not have this information readily accessible as well. Again, examiner is unable to determine if the weight is concrete and tangible or a subjective identification by the dog owner.
7. The examiner believes there are issues of new matter in the applicants amendments to the specification and drawings. The applicant added new drawing Fig. 6 in which it diagrams the process of determining a "breed code" for a cat. However,

the examiner believes there are items in which are not supported by the original specification. The items are identified below:

- a. Specification amendment Pg. 10 line 10-The applicant is adding the limitation of information being entered into a database and a conversion being done by the database of the information entered. The examiner notes that the original disclosure fails to identify the any use of a database or a computer program being used to identify breed codes or weight and/or exercise factors.
- b. Fig. 6-The applicant added figure six that is a flow chart for determining the breed code of a cat. However, the figure identifies information that was not presented in the original disclosure. The figure identifies assigning an attention factor of 1 or 2 and Temperament factor of 0-2. The original disclosure never identifies what the specific factors are for temperament and/or need for attention or how they are determined to be 1-2 or 0-2. The examiner is unable to determine if this information is concrete and tangible or is it merely subjective information determined by the cat owner. There is not correlation or discussion in how a temperament and/or attention factor are drawn from a dogs weight and exercise factors which are assigned the same numbers as the temperament and attention. Based on the original specification one would not know what is used or how to determine a cats temperament and need-for attention. Furthermore, the applicants figure six shows identifying an activity level for a cat in the initial steps of the flow chart but fails to address what an activity level is and how it is determined in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Smith whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TLS



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